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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 NADINE HAYS,

14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA,

17 Defendant.
18

No. CV 12-8585 DMG(PJWx)

Hearing Date: none scheduled
Hearing Time: none scheduled
Ctm: none scheduled

Honorable Dolly M. Gee,
United States District Judge

19
20 DEFENDANT UNITED STATES' OPPOSITION TO
21 PLAINTIFF'S MOTION TO REOPEN
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1 In her motion of August 5, 2015, Plaintiff Nadine Hays seeks to reopen a 2012
 2 complaint that the Court dismissed on February 14, 2013 for failure to exhaust
 3 administrative remedies under the Federal Tort Claims Act (“FTCA”) (28 U.S.C. §§
 4 1346(b), 2671 - 2680). Plaintiff’s motion to reopen fails because her alleged exhaustion
 5 of administrative remedies occurred after the she had filed her complaint and thus does
 6 not satisfy the FTCA’s administrative remedy requirement.

7 In McNeil v. United States, 508 U.S. 106, 113 S.Ct. 1980 (1993) a unanimous
 8 Supreme Court held that the FTCA’s administrative remedies requirement must be
 9 exhausted before commencing suit and that the petitioner, McNeil, could not rely upon
 10 exhaustion occurring after commencing his suit. Id., at 110-113; see Sparrow v. United
 11 States Postal Service, 825 F.Supp. 252 (E.D.CA 1993) (relying upon McNeil in holding
 12 that the jurisdictional flaw of filing an FTCA complaint before the exhaustion of
 13 administrative remedies could not be cured by amending the complaint and that,
 14 therefore, it was necessary for Plaintiff to file a new complaint.)

15 Plaintiff argues that this Court dismissed her 2012 complaint without prejudice
 16 and that she should therefore be permitted to reopen. However, as discussed above,
 17 reopening is precluded by the FTCA’s administrative remedy requirement and the
 18 holding of McNeil.

19 Defendant United States respectfully submits that should deny Plaintiff’s motion
 20 to reopen.

21 Dated: September 4, 2015

Respectfully submitted,

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25 /s/ Thomas K. Buck
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